



# TOWN OF FREDERICK M E M O R A N D U M

## Police Department

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TO: Derek Todd, Town Administrator

FROM: Gary Barbour, Chief of Police

DATE: November 17, 2009

SUBJECT: **Proposed Revisions to the Municipal Code – Chapter 7, Article V**

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### **Proposed Revisions to the Municipal Code – Chapter 7, Article V**

Pursuant to direction from the Town Board regarding the discussions held at the meeting of Tuesday, November 10, 2009, the following recommendations are made:

#### **ARTICLE V**

##### **Animals**

#### **Sec. 7-101. Dog and cat license required.**

The owner, possessor or keeper of any dog or cat within this Town shall purchase a license for such dog or cat from the Police Department on or before March 1 of each year or within thirty (30) days after the dog or cat reaches the age of ~~three (3)~~ six (6) months. Dogs and cats purchased, obtained or otherwise acquired, or located in Town subsequent to the first day of March in any calendar year shall be licensed within thirty (30) days after such acquisition or location. The Board of Trustees may establish higher licensing fees for animals that have not been neutered or spayed.

#### **Sec. 7-102. Definitions.**

As used in this Article, the following definitions shall apply:

- (1) *Cat* means any domesticated animal of the species *Felis domestica* over six (6) months of age.
- (2) *Dog* shall be construed to mean a dog over ~~three (3)~~ six (6) months of age.
- (3) *Keeper* means a person who has custodial or supervisory authority or control over an animal.
- (4) *Owner*. Where ownership of an animal is shared, all owners shall be jointly and severally liable. The owners may be liable even if the animal was in possession of a keeper at the time of the offense.

**Sec. 7-103. License application; rabies vaccination.**

(a) Each application for dog or cat license shall be made to the Police Department upon a form provided for that purpose. ~~and it shall be accompanied by a certificate from a duly licensed veterinarian showing that the dog has been vaccinated against rabies consistent with Subsection (b) below.~~

(b) It is unlawful for any person to own, keep or possess any ~~dog~~ or cat over the age of ~~three (3)~~ six (6) months which has not been vaccinated against rabies. The owner of any ~~dog~~ or cat shall have the animal vaccinated by a duly licensed veterinarian by ~~three (3)~~ six (6) months of age, and shall keep the vaccinations current. The vaccines used shall be of the type recommended by the "Compendium of Animal Rabies Control" as promulgated by the National Association of State Public Health Veterinarians and shall provide for duration of immunity of up to three (3) years. A current vaccination tag shall be attached to the collar of the animal.

(c) Every dog or cat whose age is such that it is not required by this Chapter to be licensed shall bear an identification tag setting forth the name and address of its owner or keeper.

(d) This Section shall not apply to facilities licensed under Section 35-80-101 through 117, C.R.S.

**Sec. 7-104. License tags.**

Upon application for a dog or cat license, ~~the furnishing of the required certificate of inoculation, documentation of animal neutering, if applicable, and the payment of the required fee,~~ the Police Department shall issue a ~~dog~~ license which shall be numbered and also a metal tag bearing the same number as the license, which tag shall be securely attached to the collar to be worn by the ~~dog~~ animal so licensed at all times. It shall be an affirmative defense if, in the absence of a collar and tag, a licensed cat is micro chipped and properly registered

**Sec. 7-105. Lost or destroyed tags.**

If a ~~dog~~ tag is lost or destroyed, the license holder may obtain a ~~duplicate~~ replacement tag from the Police Department upon paying a fee to be established by the Police Department.

**Sec. 7-106. ~~Dog pound~~ Animal shelter.**

The Board of Trustees shall have the right to establish a ~~dog pound~~ an animal shelter for the Town to be operated by Town personnel, or to contract with a public or private person or organization for the operation of a ~~dog pound~~ an animal shelter for and on behalf of the Town.

**Sec. 7-107. Impounded ~~dogs~~ animals.**

It shall be lawful for any community service officer and all police officers to impound any dog or cat which is not wearing a ~~dog~~ license tag as required in this Article and any ~~dog~~ animal which they reasonable find to be in violation of any of the provisions of this Article, whether or not such dog is wearing a ~~dog~~ license tag. Any code enforcement officer or police officer may go upon private property for the purpose of obtaining control over any dog or cat to be impounded.

**Sec. 7-108. Court proceedings.**

If a dog or cat is impounded, it shall be the duty of ~~the dog-catcher~~ any community service officer or any police officer to immediately institute proceedings in the Municipal Court on behalf of the Town against the owner, possessor or keeper, charging a violation of the appropriate Section of this Code. Nothing herein contained shall be construed as preventing ~~the dog-catcher~~ a community service officer, or any police officer or any citizen from instituting a proceeding in the Municipal Court for violation of this Article where there is no impoundment.

**Sec. 7-109. Notice of impoundment.**

As soon as practicable after the date of impoundment, notice of such impoundment shall be personally served upon the owner, possessor or keeper of such dog animal if the address of such person is known. If the owner, possessor or keeper of such dog animal is not known, or if his or her address cannot be determined, a designated agent of the Police Department shall cause to be posted at the Town Hall Police Department for five (5) consecutive days a notice of impoundment, which notice shall describe the dog animal, set forth the date of impoundment and set forth the location from which the dog animal was taken up.

**Sec. 7-110. Disposition of impounded dogs animals.**

If an impounded dog animal has not been claimed within five (5) days from first notice of impoundment, the dog animal may be disposed of in any humane manner prescribed by the community service officer or by persons so authorized to do so by the Board of Trustees C.R.S. 35-80-102(7).

**Sec. 7-111. Redemption from pound shelter.**

Any owner, possessor or keeper of a dog animal desiring to redeem such dog animal from the pound shelter shall pay the impound facility all costs for impoundment, room and board and other services, and further shall pay the Town all impound, license, rabies inoculation and applicable fees as set by the Board of Trustees from time to time.

**Sec. 7-112. Interference.**

It shall be unlawful for any person to interfere with, molest, hinder or prevent any community service officer or police officer from discharging his or her duties under this Code.

**Sec. 7-113. Dog running at large.**

(a) No owner or keeper of any dog shall fail to keep the dog on the premises of the owner or keeper unless the dog is under the control of a competent person, restrained by a substantial chain or leash not exceeding fifteen (15) feet in length and in a manner as to not have access to any passerby. Any owner or keeper with a dog at a designated dog park shall be governed by the provisions at Section 7-114.”.

(b) Any dog that is out of doors on the owner's or keeper's property shall be maintained on the premises by means of adequate fencing, to include, but not be limited to, an underground electronic barrier with a transmitter collar worn by the dog, or voice control of a competent person. Leaving an unattended dog fastened to a leash, chain or trolley shall not be deemed to comply with the requirements of this Section.

(c) It shall be an affirmative defense to a charge of a violation of this Section that the dog was on the premises of another person known to the owner or keeper with the express permission of the property owner, the dog was accompanied by its owner or keeper and the dog was within the immediate presence and voice control of the owner or keeper.

(d) *Voice control* means control of the behavior of a dog which is not leashed or otherwise physically restrained by its owner or keeper sufficient that the dog does not, without regard to circumstances or distractions:

- (1) Charge, chase or otherwise display aggression toward any person or behave toward any person in a manner that a reasonable person would find is harassing or disturbing;
- (2) Charge, chase or otherwise display aggression toward any dog or other animal;
- (3) Chase, harass or disturb wildlife or livestock; or
- (4) Fail to come to and stay with the owner or keeper immediately upon command by such person.

Voice control does not exist unless the guardian or keeper exercises this command authority at all times to keep the dog within the requirements of this definition.

**Sec. 7-114. Dog parks.**

(a) Section 7-113 above shall not apply to areas designated by the Town as dog training areas or off-leash dog park sites (*dog parks*).

(b) At any designated dog park, the owner or keeper of a dog may allow the dog to be at large off leash, subject to the conditions set forth below. Violation of any condition set forth herein shall constitute a violation of this Section. Such violations are designated as noncriminal and, upon conviction, the penalties set forth at Subsection 1-72(a) of this Code shall apply.

- (1) Owners/keepers shall obey the hours of the dog park as posted.
- (2) Owners/keepers shall keep their dogs on a leash held by a person able to control the dogs when entering or leaving the fenced enclosure of the dog park.
- (3) Dogs must be accompanied by a person at least twelve (12) years of age when inside the enclosed area of the dog park.
- (4) Children under the age of twelve (12) years must be supervised by a person who is at least eighteen (18) years of age.
- (5) Owners/keepers shall not allow their dogs to chase or harass wildlife or other dogs.
- (6) Owners/keepers shall not leave their dogs unattended at the dog park.
- (7) Pinch (prong) and spike collars shall be removed prior to entering the dog park, without removal of the dog's license tags.
- (8) Owners/keepers shall not bring any of the following dogs into the dog park:
  - a. Vicious or aggressive dogs;

- b. Female dogs in heat;
- c. Dogs without a current vaccination tag and Town license tag attached to the collar worn by the dog;
- d. ~~Dogs without a current identification tag attached to the collar worn by the dog or a traceable microchip;~~
- e. ~~Unvaccinated dogs;~~
- f. Dogs known to be ill or exhibiting signs of illness; or
- g. Dogs not under voice command, unless in areas at the site designated for training.

(9) Any person who brings a dog to a designated dog park shall be considered the owner/keeper of the dog for purposes of this Section.

(10) Anyone entering a designated dog park assumes the risk of injury and property damage caused by their dogs to other dogs, other persons or any of the facilities at the dog park. By entering the dog park, every person agrees to release the Town and its employees from liability for injuries or property damage caused by any act or omission of the Town or its employees. The owner/ keeper assumes liability for any injury or property damage to persons or other dogs caused by their dogs.

**Sec. 7-115. Fees for impounding dogs animals.**

Any owner, possessor or keeper of ~~a dog~~ an animal impounded pursuant to Section 7-107 of this Chapter shall pay a fee in an amount set by resolution of the Board of Trustees in addition to any other fees, charges or fines related to such animal.

**Sec. 7-116. Depositing animal feces unlawful.**

(a) It is unlawful for any owner, possessor or person who keeps any animal to permit it to deposit any fecal matter on any public or private property of another, or in any waters.

(b) It is an affirmative defense to this Section if a person in immediate control immediately removes and deposits in an appropriate trash container fecal matter deposited by a domesticated animal.

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**Sec. 7-117. Accumulation of animal feces unlawful.**

The accumulation of animal feces compromises public health and constitutes a threat to public safety and welfare. It is unlawful for the owner or keeper of an animal to allow animal feces to accumulate so as to be a health hazard or so that the odor is noticeable on adjoining property.

**Sec. 7-118. Strict liability.**

For the purpose of prosecution for violation of this Article, it shall not be necessary in order to obtain a conviction to prove notice or knowledge on the part of the owner, possessor or keeper of the dog or cat in question that such dog or cat was violating any of the provisions of this Article at the time and place charged, it being the purpose and intent of this Article to impose strict liability upon the owner, possessor or keeper of any dog or cat for the actions, conduct or condition of such dog or cat.

**Sec. 7-119. ~~Reserved.~~ Quantity of pet animals restricted.**

In no event shall any person keep at his or her premises more pet animals than can be properly maintained in a healthy condition without presenting a health or safety hazard to the owners, keeper or others and without constituting a nuisance to the occupants of neighboring properties.

**Sec. 7-120. Prohibited animals.**

No person shall keep or harbor within the Town limits any animal that may reasonably and generally be categorized as fowl, livestock or wild animal, except as herein provided, and except rodent, cat and birds commonly kept within the home.

**Sec. 7-121. Cruelty to animals prohibited.**

(a) No person shall:

- (1) Overdrive, overload, drive when overloaded or overwork any animals;
- (2) Cruelly beat, cruelly mutilate or torture any animal;
- (3) Needlessly shoot at, wound, capture or in any other manner needlessly molest, injure or kill any animal; or
- (4) Carry, transport or keep in a cruel manner any animal.

(b) It is a specific defense to a charge of violating Subsection (c) below that the action was necessary to avoid injury to a person or that the animal was not a domesticated animal and the action was necessary to avoid injury to a person or property.

(c) It is unlawful for any person to fail to provide an animal owned or in the custody of such person with adequate food and water, proper shelter, veterinary services and humane care and treatment necessary to maintain the good health of the animal and to prevent suffering by the animal.

(d) Where there is reasonable suspicion to believe that an animal(s) is being mistreated or neglected, as described in Paragraphs (a) and (c) of this Section, and the owner or keeper is unavailable, the Police Department may enter the premises and remove and impound the animal(s). *Premises*, as used in this Section, is defined to include the land and the structures thereon, not to include the home.

(e) Where an animal(s) is located in a home and is not otherwise accessible, and a peace officer has probable cause to believe that the animal(s) is being mistreated or neglected, as described in paragraphs (a) and (c) of this Section, to the extent that the life of the animal(s) is endangered and the owner or keeper is unavailable, the peace officer may enter the home for the purpose of removing and impounding the animal(s) upon the issuance of a warrant issued by an appropriate court for such purpose.

(f) The owner or keeper of the impounded animal(s) shall be responsible for all charges incurred in impounding the animal.

(g) Upon impounding the animal(s), the Police Department shall make all reasonable efforts to notify the owner or keeper of the impoundment. If attempts to notify the owner or keeper of the impoundment in person or by telephone are unsuccessful, notice may be made by posting written notification of the impoundment at the premises from which the animal(s) was removed.

**Sec. 7-122. Disturbance.**

(a) It shall be unlawful for any owner or keeper of any animal to fail to prevent the animal from disturbing any person by barking, howling, yelping or any other audible sound.

(b) No person shall be charged with violating this Section unless a written warning was issued to the owner or keeper of the animal within twelve (12) months preceding the first date alleged as the date of violation in the complaint. The written warning shall advise the owner or keeper of the animal of the nature of the violation, the date and approximate time of the violation, and that in the event a second violation occurs within a year of the date of the written warning, a summons and complaint may be issued. The written warning shall be provided to the owner or keeper of the animal by personal service, posting upon the property of the owner or keeper of the animal or mailing first class to such person. A copy of the written warning is prima facie evidence that the warning was issued and served properly.

**Sec. 7-123. Vicious animals.**

(a) It is unlawful for any person to harbor or keep a vicious animal within the Town. Any vicious animal shall be deemed a public nuisance, and may be seized by any police officer or animal control officer of the Town, and upon appropriate complaint and order of the Municipal Court or any other court of competent jurisdiction, may be humanely destroyed or otherwise disposed of, as the Court may determine in the abatement of the nuisance and protection of the public safety. It shall be an affirmative defense to prosecution under this Section that a dog is under the control of a law enforcement agency or the dog is a trained guard dog kept for the protection of property, and restrained by cage, fence or other adequate means from contact with the general public or with persons who enter the premises with the actual or implied permission of the owner or occupant, provided that the premises are posted in a manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog. Nothing in this Section shall be construed to prevent the immediate killing of a vicious animal if, under the circumstances, such action is required to protect the public safety.

(b) *Vicious animal* is defined as an animal that bites or attacks a human or another animal, or approaches a human in an apparent attitude of attack, whether or not an attack actually occurs.

**Sec. 7-124. Hearing on destruction of vicious animal.**

(a) Upon the filing of a motion for destruction of a vicious animal, the Municipal Court shall set a hearing as soon as practical. The Court or Town Prosecutor shall promptly serve the owner, if known or reasonably discoverable, with written notice of the hearing and a copy of the motion at least five (5) days before the hearing. Service shall be pursuant to C.M.C.R. 204(e), 249(b) and C.R.C.P. 5(b).

(b) The hearing shall be for the purpose of deciding if the animal is a public nuisance. The Town shall bear the burden of proof at the hearing, by a preponderance of the evidence. If the owner, without good cause, fails to appear at the hearing, at arraignment or at trial, the dog animal shall be deemed abandoned

and, upon proper proof of the public nuisance, may be destroyed or otherwise disposed of consistent with this Section.

(c) A continuance of the hearing on the motion for destruction, or a stay of the destruction order, may be granted only if the owner posts a bond sufficient to cover the total costs of the impoundment and destruction.

**Sec. 7-125. Care and keeping of domestic cats.**

~~(a) Vaccination and identification tags.~~

~~(1) It is unlawful for any person to own, keep or possess any cat over the age of three (3) months which has not been vaccinated against rabies. The owner of any cat shall have the animal vaccinated by a duly licensed veterinarian by three (3) months of age and shall keep the vaccinations current. Upon request of the Town Administrator, or his or her designee, or any police officer of the Town, the owner or keeper shall provide proof of the vaccination.~~

~~(2) Every person who owns, keeps or possesses any cat over the age of three (3) months shall attach an identification tag to the collar or harness of the cat. The identification tag shall contain the name, address and phone number of the owner or keeper of the cat. Such tags shall remain attached to the collar or harness at all times, and the collar or harness shall be worn by the cat at all times.~~

~~(b) Removal of excrement. It shall be unlawful for any owner or keeper of any cat to fail to immediately remove excrement deposited by his or her cat upon any public property or private property.~~

~~(e) (a) Damage to property. It shall be unlawful for any owner or keeper of any cat to fail to prevent such animal from destroying, damaging or injuring any shrubbery, plant, flowers, grass, lawn or any other item on public property or upon private property owned or occupied by a person other than the owner or keeper of the animal.~~

~~(d) (b) Feral cats. It shall be unlawful for any person to offer any food to a feral cat.~~

~~(e) (c) This Section is declared to be a noncriminal violation. Upon conviction, penalties set forth at Section 1-72 of this Code may be imposed.~~

**Secs. 7-126—7-140. Reserved.**